

December 4, 2012

VIA ECFS

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Room TW-A325
Washington, DC 20554

Re: Universal Service Fund Contribution Reform, WC Docket No. 06-122

Dear Ms. Dortch:

The Ad Hoc Coalition of International Telecommunications Companies ("ACITC" or "Coalition") hereby submits the following letter from the Universal Service Administrative Company ("USAC") as a supplement to its three pending petitions for declaratory rulings or in the alternative for rulemaking.

In its first petition, the ACITC sought abolition of indirect Universal Service Fund ("USF") contributions resulting from USAC's treatment of revenues from non-contributors as end-user revenues. Specifically, by virtue of USAC's application of the Carrier's Carrier Rule ("CCR") instructions, because revenues from non-contributors are treated as end-user revenues, wholesale providers must include these revenues in their contribution bases and contribute to the USF based upon such revenues. Further, under USAC's policies, wholesale providers can pass these revenues through to non-contributing resellers. Resellers, therefore, may experience inflated indirect USF fees that USAC has no authority to impose directly. The Coalition sought a declaratory ruling finding that *de minimis* providers may choose whether (a) to accept supplier pass-through surcharges OR (b) to pay contributions directly, even if their annual contributions would be less than \$10,000. In addition, the petition requested reform of the current instruction requiring prepaid calling card providers to report at face value, and demanding contribution at each level of the distribution chain.

Thereafter, in its second petition, the ACITC requested a declaration that USAC lacks authority to assess USF fees on international only providers and that the FCC lacks jurisdiction to impose USF obligations on non-U.S. entities either directly or indirectly. The Coalition noted that by treating revenues from non-contributing international service providers as end-user revenues, international carriers, otherwise exempt from direct contribution, become unlawfully subject to the USF, disadvantaging such carriers as against their "mostly" international service provider competitors. Moreover, by strict application of the Form 499-A instructions, USAC effectively subjects international only carriers to USF contribution obligations, clearly a substantive change to the Commission's rules and orders, which has been adopted without the requisite notice and comment opportunity in contravention of the Administrative Procedure Act ("APA").

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And, finally, in the third petition, the Coalition urged Commission action on its first petitions and other pending industry requests for relief from inequitable application of the CCR. Further, the ACITC encouraged the adoption of a uniform USF exemption certificate to avoid the chaos and confusion stemming from subjective interpretation of inconsistent forms.

The attached letter from USAC evidences its continued strict adherence to the Form 499-A instructions, which direct filers to treat revenues from exempt entities (e.g., *de minimis* or international only resellers) as end-user revenues, entitling filers to pass through USF fees on these revenues to non-contributing resellers.¹ More importantly, the letter highlights USAC's misplaced reliance on *ultra vires* Bureau-level and Commission orders to support its failure to accept voluntary contributions from exempt entities. As the letter explains, USAC rejected a carrier's request to contribute directly to the USF so as to avoid pass-through fees. The carrier was *de minimis* by virtue of the Limited International Revenue Exemption ("LIRE") because it was required to contribute only on its interstate end-user revenues, thus rendering its contribution obligation below the \$10,000 annual threshold. As an indirect contributor, the carrier was paying USF fees on 100% of the revenue its suppliers collected from the carrier, as opposed to 1% of its retail end-user revenues, its USF contribution base if it contributed directly.

Despite this clear violation of the FCC's original rules,² which by the plain language of the Orders from which they emanate were designed to exempt *de minimis* and international only carriers from ALL contributions, USAC concluded that "USAC is not authorized to accept voluntary universal service obligations from *de minimis*, international only and other exempt carriers." In support of this conclusion, USAC mistakenly relies upon Bureau-level "precedent," incorrectly presuming that it carries the weight of FCC rules. USAC admits, "Although the rule itself does not explicitly state that the *de minimis* exemption applies to a carrier's direct federal universal service obligation, multiple **FCC** orders so state." In fact, the majority of the "FCC" orders USAC references are mere Bureau-level orders that do not bear the force of Commission rules because they exceed the Bureau's delegated authority.³

¹ The Coalition is not the only industry group to raise the injustice of USAC's refusal to accept direct USF contributions from *de minimis* carriers. The American Public Communications Council ("APCC") filed an ex parte presentation on November 29, 2012 urging the Commission to direct USAC to accept direct USF contributions from *de minimis* filers opting to contribute directly to the Fund. The APCC also noted that USAC's position unfairly disadvantages certain providers and conflicts with the FCC's rules which do not preclude *de minimis* carriers from contributing directly if they choose. See American Public Communications Council, Ex Parte, WC Docket No. 06-122, WC Docket No. 09-151, Nov. 29, 2012, available at <http://apps.fcc.gov/ecfs/document/view?id=7022069697>.

² The FCC's original rules are the only valid rules pertaining to this topic, since they were the only rules promulgated in compliance with the APA's notice and comment requirements. As explained in this letter, USAC's reliance on Bureau decisions that have subsequently altered the substantive duties of contributors exceed the Bureau's delegated authority and therefore form an unsustainable basis for USAC's conclusions.

³ See page 8, n. 54 of the attached letter.

Like USAC, the Wireline Competition Bureau's ("Bureau" or "WCB") authority is limited. While the FCC has authority to delegate certain responsibilities to the Bureau,⁴ those responsibilities cannot be exercised in contravention of FCC rules, policies and orders.⁵ Likewise, the Bureau cannot itself initiate a rulemaking or create substantive rules.⁶ Clearly, any requirement or instruction effectively imposing indirect contribution obligations on otherwise exempt filers is substantive because it implements, interprets and prescribes law.⁷ It clearly has a substantive impact on filers, affecting their contribution obligations. As a result, any attempt by the Bureau to adopt a substantive rule imposing indirect contribution obligations on exempt entities is invalid.

The FCC's duly promulgated rules unequivocally exempt certain carriers from USF contribution.⁸ Instructions in the Form 499-A in direct conflict with Commission rules must be ignored by USAC; they cannot be treated as if they bear the force and effect of law. The instructions were adopted in contravention of the requirements of the APA. As such, the instruction directing underlying carriers to treat revenues from non-contributing resellers as end-user revenues is invalid and cannot be relied upon by USAC to support its refusal to accept voluntary contributions from *de minimis* carriers.⁹ The APA subjects statements that "implement, interpret, or prescribe law or policy" to notice and comment requirements.¹⁰ The Commission adopted the Form 499-A and its instructions in 1999.¹¹ Even though the new instructions imposed substantive obligations on filers,

⁴ 47 U.S.C. § 155(c); 47 C.F.R. § 0.91.

⁵ As an entity with delegated authority, the WCB must abide by the rules of its governing agency, the FCC.

⁶ 47 C.F.R. § 0.291(e).

⁷ See 5 U.S.C. § 551(4) (defining a "rule" as "the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency..."); 5 U.S.C. § 552(a)(1)(D) ("Each agency shall separately state and currently publish in the Federal Register for the guidance of the public...substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency..."); *GMC v. Ruckelshaus*, 742 F.2d 1561, 1565 (D.C. Cir. 1984).

⁸ 47 C.F.R. § 54.708.

⁹ See *Buschmann v. Schweiker*, 676 F.2d 352, 355-56 (9th Cir. 1982) ("A regulation is invalid if the agency fails to follow procedures required by the Administrative Procedures Act"). See also *U. S. Steel Corp. v. U. S. Environmental Protection*, 595 F.2d 207, 210 (5th Cir. 1979); *Anderson v. Butz*, 550 F.2d 459, 462 (9th Cir. 1977); *Hotch v. United States*, 212 F.2d 280 (9th Cir. 1954); *Carter v. Blum*, 493 F.Supp. 368, 372 (S.D.N.Y. 1980); *Kelly v. United States Department of Interior*, 339 F.Supp. 1095, 1100-1101 (E.D.Cal. 1972); *City of New York v. Diamond*, 379 F.Supp. 503, 518 (S.D.N.Y. 1974).

¹⁰ 5 U.S.C. §§ 551(4), 552(a)(1)(D); *GMC v. Ruckelshaus*, 742 F.2d 1561, 1565 (D.C. Cir. 1984).

¹¹ See 1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms, Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans With Disabilities Act of 1990, Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size, Number Resource Optimization, Telephone

the FCC neglected to subject them to a notice and comment rulemaking proceeding, thus violating the APA.¹² As such, the instructions, as adopted, are *ultra vires*.

USAC cites to a single Commission Order in support of its claim that the *de minimis* exemption is intended only to exempt qualifying carriers from "direct" contribution. This Order attaches the 2006 FCC Form 499-A.¹³ Because these instructions have been invalid since publication in 1999 since they were never subject to the requisite notice and comment under the APA required of substantive Commission rules, despite their substantive impact, USAC's reliance on this order is misplaced.

Furthermore, USAC's authority is limited to collection and "audit" matters and is subject to review by the FCC.¹⁴ USAC may not "make policy, interpret unclear provisions of the statute or rules, or interpret the intent of Congress" and is required to seek guidance from the FCC on such matters.¹⁵ As a result, any attempt by USAC to itself interpret FCC rules to allow indirect contributions directly contravenes its limited charter.

USAC, however, continues to abuse its authority by relying upon (1) Bureau orders that exceeded the scope of the Bureau's delegated authority and (2) *ultra vires* Form 499-A instructions.¹⁶ The impact on exempt providers is significant. In addition to *de minimis* carriers, by

Number Portability, Truth-in-Billing and Billing Format, Report and Order, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170, FCC 99-175 (rel. July 14, 1999) at Appendix D.

¹² Commenters filing in the ongoing USF Reform proceeding agree. See, e.g., *In the Matter of Universal Service Contribution Methodology A National Broadband Plan for our Future*, WC Docket No. 06-122, GN Docket No. 09-51, Verizon Comments at 7 (filed July 9, 2012) ("[T]he Commission has used changes in the Worksheets to put in place substantive requirements without adherence to the requirements of the Administrative Procedure Act."); Comments of the United States Telecom Association at 10 (filed July 9, 2012) ("Changes to the Worksheets and accompanying instructions can be substantive and should be subject to notice and comment."); Comments of AT&T at 42 (filed July 9, 2012).

¹³ *In the Matter of Universal Service Contribution Methodology, Federal-State Joint Board on Universal Service, 1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms, Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990, Administration of the North American Numbering Plan Cost Recovery Contribution Factor and Fund Size, Number Resource Optimization, Telephone Number Portability, Truth-in-Billing Format, IP-Enabled Services, Report and Order and Notice of Proposed Rulemaking*, 21 FCC Rcd. 7518 (2006).

¹⁴ "The FCC retains the authority to overrule USAC's actions in administering the universal service support funds; those who are aggrieved by USAC, its committees, or its Board may seek review from the FCC." *In re InComnet v. Post-Confirmation Committee of Unsecured Creditors of Incomnet Communications Corp.*, 463 F.3d 1064 (9th Cir. 2006); 47 C.F.R. § 54.702.

¹⁵ 47 C.F.R. § 54.702.

¹⁶ *Mis-Administration and Misadventures of the Universal Service Fund: A Case Study in the Importance of the Administrative Procedure Act to Government Agency Rulemaking*, 19 CommLaw

strict application of the Form 499-A instructions, USAC has subjected "international only" carriers to indirect USF contributions. This implicates not only the FCC's rules but the Communications Act and the entire federal regulatory regime. The Commission, and USAC as its agent, has no authority to regulate traffic that both originates and terminates outside of the U.S. Companies whose traffic neither originates nor terminates in the U.S., therefore, are exempt from the Commission's jurisdiction. Yet, by treating revenues from international only carriers as end-user revenues, USAC has effectively subjected these carriers to the Commission's jurisdiction via its USF rules.

USAC has been abusing its own delegated authority in this regard, by relying upon precedent that lacks the force and effect of law to justify its policies.¹⁷ Many industry participants are calling on the FCC to implement interim and permanent reforms to the administration of the USF by USAC and the WCB.¹⁸ The ACITC submits this filing to the record being developed in Docket 06-122 for the purpose of identifying a key reform measure in desperate need of the Commission's attention. In addition, ACITC implores the Commission to signal to USAC that it must end its blind reliance on *ultra vires* decisions, policies and directives emanating from the WCB as a means of substantively altering the obligations of contributors and otherwise expanding the scope of the Fund's reach beyond the boundaries established by the Commission in its duly promulgated regulations.

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Conspectus 343, 346 (2011) ("Not only did the FCC's clandestine delegation of substantive rulemaking and decision-making to USAC violate the APA; but so too did USAC's implementations of that illegitimately delegated authority by its adopting, announcing and enforcing rules and decisions for which it had no legal authority.").

¹⁷ *Id.*

¹⁸ See, e.g., Verizon Ex Parte, Universal Service Contribution Methodology; Universal Service Administrative Company Request for Guidance, WC Docket No. 06-122, Oct. 25, 2012 (attaching white paper urging the Commission to overturn the Bureau's order adopting asymmetrical filing deadlines for upward (no limitation) and downward (1 year) adjustments to revenues reported in Form 499-A, arguing that the Bureau's Order (1) violated the APA because it was not the subject of a notice and comment rulemaking; (2) was beyond the Bureau's delegated authority; and (3) imposed an arbitrary and capricious deadline that otherwise conflicts with law, and is therefore invalid); See also Ex Parte Letter filed by inContact, Inc., Universal Service Contribution Methodology; Universal Service Administrative Company Request for Guidance, WC Docket No. 06-122, filed Nov. 2, 2012 (supporting Verizon's Ex Parte submission, in particular the application of the four-year federal default SOL as a limitation on USAC's ability to demand additional USF fees).

Should you have any further questions, kindly contact the undersigned at jsm@commlawgroup.com or (703) 714-1313.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'JSM', with a stylized flourish extending from the end.

Jonathan S. Marashlian
Coalition Counsel

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EXHIBIT

A



Via Electronic and Certified Mail

August 27, 2012

Jonathan S. Marashlian, Esq.
Managing Partner
Marashlian & Donahue, LLC
The CommLaw Group
The Compliance Group, Inc.
1420 Spring Hill Road
Suite 401
McLean, VA 22102

Re:

[REDACTED]
Request for Reconsideration of Previous Guidance Letter dated June 6, 2012

Dear Mr. Marashlian:

This responds to your letter on behalf of the [REDACTED] dated June 6, 2012.¹ In your letter you provide your understanding of the correspondence between you and the Universal Service Administrative Company (USAC) to date regarding the ability of *de minimis* and international only carriers to make voluntary federal universal service contributions.² Your letter states that language in the recent Further Notice of Proposed Rulemaking (FNPRM)³ issued by the Federal Communications Commission (FCC or Commission) conflicts with USAC's previous guidance to you regarding voluntary federal universal service contributions by *de minimis* and international only carriers and you request that USAC reconsider its prior analysis.⁴ Your letter further states that USAC is only permitted to "implement and administer FCC rules, regulations and policies" and asserts that "USAC need not await FCC guidance to correct its policies."⁵

As explained in USAC's prior communications to you, and as discussed in more detail below, there is nothing in the FCC's rules or orders that authorizes USAC to accept voluntary contributions from *de minimis* and international only carriers. Moreover, the FCC's rules, orders and FCC Form 499-A instructions make clear that while *de minimis*

¹ Letter from Jonathan Marashlian, Marashlian & Donahue, LLC, to Kristin Berkland, USAC Assistant General Counsel (June 6, 2012) (*June 2012 Letter*).

² *Id.*

³ *June 2012 Letter*. See also, *Universal Service Contribution Methodology; A National Broadband Plan for Our Future*, WC Docket No. 06-122, GN Docket No. 09-51, Further Notice of Proposed Rulemaking, FCC 12-46 (rel. Apr. 30, 2012).

⁴ *Id.*

⁵ *Id.*

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and international only carriers do not incur a direct federal universal service contribution obligation, they may be assessed federal universal service pass-through charges by their underlying carriers. In fact, contrary to the statements in your June 6, 2012 letter, the language in the FCC's recent FNPRM reinforces, rather than contradicts USAC's guidance on this matter. Further, USAC notes, as it has in previous correspondence, that you have sought the FCC's guidance on this matter on at least four separate occasions, the most recent being on March 8, 2012.⁶ As USAC has stated in its previous correspondence, because there is no FCC rule, order or other directive that authorizes USAC to accept voluntary federal universal service contribution obligations from *de minimis* and international only carriers and this matter is currently pending before the FCC, USAC is not authorized to accept voluntary federal universal service contribution obligations from *de minimis*, international only and other exempt carriers.

As referenced in your June 6, 2012 letter, your firm sent USAC an email in January 2012 inquiring as to whether a provider that is *de minimis* by virtue of the limited international revenue exemption may elect to contribute directly to the universal service support mechanisms.⁷ Specifically, the January 2012 email states that your firm has determined that [REDACTED] "by virtue of the limited international revenue exemption (LIRE), will be *de minimis*."⁸ The January 2012 email further states that [REDACTED] "would like the opportunity to contribute directly to the USF, even though its contribution would be under \$10,000 per year (i.e., it wishes to be listed in the FCC's database as a direct contributor because without the designation of "YES" Direct Contributor to USF, [the] client's main supplier is passing through USF surcharges on 100% of revenue, which is 99% more than [REDACTED] direct contribution would amount to)."⁹ According to the January 2012 email, your firm "has attempted to get clarification on the issue of a provider's right to elect

⁶ Letter from Jonathan Marashlian, Marashlian & Donahue, LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-122 (filed Mar. 8, 2012) (requesting immediate action to prevent what the *CommLaw* Group characterizes as "inequitable and discriminatory consequences resulting from...[USAC's] policy forbidding *de minimis* contributors from electing to become direct Universal Service Fund...contributors"); *Ad Hoc Coalition of International Telecommunications Companies' Petition for Declaratory Rulings That: (1) Qualifying Downstream Carriers May Choose Either to Accept Supplier Pass-Through Surcharges or Pay Universal Service Fees Directly; and (2) Prepaid Calling Card Providers' Distributor Revenues are Not "End-User" Revenues and Allowing Reporting of Actual Receipts Only; or In the Alternative, to Initiate a Rulemaking to Address These Issues*, WC Docket No. 06-122, Petition for Declaratory Ruling (filed Feb. 12, 2009) (*Second Coalition Petition*); *Ad Hoc Coalition of International Telecommunications Companies' Petition for Declaratory Rulings That (1) the Universal Service Administrative Company Lacks Authority to Indirectly Assess Universal Service Fund Fees on International Only Providers and (2) the FCC Lacks Jurisdiction over Certain Non-U.S. International Providers, or, in the Alternative to Initiate a Rulemaking Proceeding to Initiate a Rulemaking Proceeding to Examine These Issues*, WC Docket No. 06-122, Petition for Declaratory Ruling; Petition for Rulemaking (filed Sept. 4, 2009); *Ad Hoc Coalition of International Telecommunications Companies' Petition for Rulemaking to Address Inequities in USAC's Interpretation and Application of the Carrier's Carrier Rule*, WC Docket No. 06-122, Petition for Rulemaking (Feb. 16, 2010).

⁷ Email from Jacqueline Hankins, Marashlian & Donahue, LLC, to Kristin Berkland, USAC Assistant General Counsel (Jan. 5, 2012).

⁸ *Id.*

⁹ *Id.*

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direct contribution despite *de minimis* status from the FCC,” but your firm’s request remains unresolved.¹⁰

On January 21, 2012, USAC responded to your firm’s January 2012 email.¹¹ In its response, USAC confirmed that, pursuant to current USAC procedure, *de minimis* carriers are identified as non-contributors on the FCC’s Form 499 filer website.¹² Regarding whether a *de minimis* carrier may elect contribute directly to the universal service support mechanisms, USAC stated that FCC Rule (47 C.F.R. §) 54.708 states that a contributor that meets the *de minimis* exemption “will not be required” to contribute to the universal service support mechanisms.¹³ However, as further stated in USAC’s January 21, 2012 email, contrary to the *Second Coalition Petition* filed by your firm, USAC does not concur that this rule creates a voluntary opt out provision where by a *de minimis* carrier may choose to directly contribute to the universal service support mechanisms.¹⁴ Rather, the FCC has stated that the purpose of the *de minimis* exemption is to “prevent waste resulting from requiring contributions when the administrative costs of collecting them will exceed the amounts collected.”¹⁵ As explained in USAC’s January 21, 2012 email, “[i]f *de minimis* carriers were permitted to [voluntarily] contribute [to the universal service support mechanisms], USAC would have to fundamentally alter its assessment and processing procedures to account for the voluntary contributions. The cost of doing so would likely outweigh the contributions collected. Because of the administrative burden in collecting and processing contributions from *de minimis* carriers, USAC [may not] accept voluntary payments from [REDACTED] as long as the company qualifies for the *de minimis* exemption.”¹⁶

In February 2012 your firm sent USAC a second email asking USAC to reconsider its original position related to voluntary federal universal service contributions by *de minimis* carriers and stating your concern that USAC may be “inadvertently overlooking the applicable FCC rules and policy directives pertaining to the *de minimis* exemption.”¹⁷ Specifically, you referenced the FCC’s *Fourth Order on Reconsideration* for the proposition that USAC could consider both its administrative costs, as well as the administrative costs of carriers in determining whether to accept voluntary federal universal service contributions.¹⁸ You stated that the FCC’s purpose in creating the *de*

¹⁰ *Id.* (referencing and providing the following URL link to the CommLaw Group’s *Second Coalition Petition*: <http://fjallfoss.fcc.gov/ecfs/document/view?id=6520199681>).

¹¹ Email from Kristin Berkland, USAC Assistant General Counsel, to Jacqueline Hankins, Marshlian & Donahue, LLC (Jan. 21, 2012) (*USAC January 2012 Email*).

¹² *Id.*

¹³ 47 C.F.R. § 54.708.

¹⁴ *USAC January 2012 Email*. See also, 47 C.F.R. § 54.708; *Second Coalition Petition* at 10-11.

¹⁵ *USAC January 2012 Email*. See also, *In the Matter of Federal State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, FCC 97-157, 12 FCC Rcd 8776, ¶ 802 (1997).

¹⁶ *USAC January 2012 Email*.

¹⁷ Email from Jonathan Marshlian, Marshlian & Donahue, LLC, to Kristin Berkland, USAC Assistant General Counsel (Feb. 9, 2012) (*February 2012 Email*).

¹⁸ *Id.*

de minimis exemption was to exempt *de minimis* carriers from the federal universal service contribution requirement entirely.¹⁹ You further stated that “[t]his situation, where *de minimis* carriers not only find themselves paying no contributions at all...but frequently find themselves paying more in indirect contributions than their interstate revenue would yield, does not emanate from any discernible FCC rules.”²⁰ According to your letter, “[t]he situation exists as a consequence of mere changes in the Form 499-A Instructions” that require wholesale carriers to report revenue from *de minimis* carrier customers as end user revenue.²¹ Your email seems to imply that the instructional change was made by USAC as, immediately after a discussion of the instructions, you state that “[i]t goes without saying that USAC lacks the authority to make substantive FCC rules.”²² Your email closes with a “courtesy notice” informing USAC that [REDACTED] “either directly or through its representatives, reserves its opportunity to seek clarification of its rights from the FCC in the event USAC fails to address the concerns” raised in the email.²³

On March 8, 2012, USAC responded to your firm’s February 2012 email.²⁴ USAC reiterated that, for the reasons stated in USAC’s January 21, 2012 email, USAC may not accept voluntary federal universal service support mechanism contributions from carriers.²⁵ Regarding your statement that USAC consider both its own administrative costs, as well as the administrative costs of carriers in determining whether to accept voluntary federal universal service contributions, USAC noted that the FCC’s *Fourth Order on Reconsideration* cited by you in your email “declined to exclude from the contribution requirement all entities that claim compliance costs in excess of contribution amounts.”²⁶ In other words, the order “did not establish a mechanism through which carriers that are assessed universal service contribution obligations by their underlying carrier because the underlying carrier treats the carrier as an end-user can exempt themselves from assessment by their underlying carrier through establishing themselves as a universal service reporting filer, and thereby claim the *de minimis* exemption and evade universal service contribution requirements.”²⁷ Moreover, as USAC pointed out, the *Fourth Order on Reconsideration* adopted a “substantially increased *de minimis* threshold designed to take into account contributors’ compliance costs in addition to [USAC’s] administrative costs.”²⁸ Regarding your statement that it is changes to the FCC Form 499-A instructions that require wholesale carriers to report revenues from *de minimis* carrier customers as end user revenue that result in carriers paying more in

¹⁹ *Id.*

²⁰ *Id.* (emphasis in original).

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ Email from Kristin Berkland, USAC Assistant General Counsel, to Jonathan Marashlian, Marashlian & Donahue, LLC (Mar. 8, 2012) (*USAC March 2012 Email*).

²⁵ *Id.*

²⁶ *Id.* (citing *Fourth Order on Reconsideration*, CC Docket Nos. 96-45, et al., FCC 97-240, 13 FCC Red 5318, *96, ¶ 295 (1997)).

²⁷ *Id.*

²⁸ *Id.* (citing *Fourth Order on Reconsideration*, 13 FCC Red 5318, *96, ¶ 295).

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indirect contributions than they would if they were able to voluntarily directly contribute to the federal universal service support mechanisms, USAC drew your attention to two FCC orders holding that an underlying carrier must report the revenues of its *de minimis* customers for universal service contribution purposes.²⁹ In addition, USAC informed you that, contrary to what seemed to be implied in your email, it is the FCC, not USAC, that revises the FCC Form 499-A instructions, which the FCC publishes in the Federal Register.³⁰ Regarding your February 2012 email reminder that USAC lacks the authority to make substantive FCC rules, as was stated in USAC's March 8, 2012 email, because there is nothing in the FCC's rules or order permitting or directing USAC to accept voluntary federal universal service contributions from *de minimis* carriers and because this question is currently pending before the FCC, it would be inappropriate for USAC to permit such contributions at this time.³¹

In June 2012, your firm again raised the issue of USAC accepting voluntary contributions from *de minimis* carriers.³² In a June 6, 2012 cover email accompanying a June 6, 2012 letter, your firm again requested that USAC "revisit and reconsider its policies [and] procedures related to international only, *de minimis* filers and take all necessary actions to prevent the perpetuation of indirect USF assessments" on such filers.³³ The cover email recommends that USAC post a public notice on its website to clarify that international only, *de minimis* filers should not be treated as end user customers by their underlying carriers for universal service contribution purposes.³⁴ The cover email further states that "[u]ntil the Form 499-A and associated instructions are amended to correct the misstatements of the FCC's duly promulgated and lawful rules and regulations, [redacted] urges USAC to take action to mitigate the harms which continue to impact [redacted] and all similarly-situated service providers."³⁵ The cover email closes by stating that your firm

²⁹ *Id.* (citing *Fourth Order on Reconsideration*, 13 FCC Rcd 5318, *91, ¶ 281 (finding that *de minimis* systems integrators are to notify their underlying carriers of their *de minimis* status and the revenues received from *de minimis* carriers are to be reported in the underlying carriers' contribution bases); *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order on Reconsideration, FCC 04-237, 19 FCC Rcd 23824, 23841, ¶ 48 (2004) ("In the *Fourth Reconsideration Order*, the Commission further concluded that, in order to maintain the sufficiency of the universal service support mechanisms, entities reselling telecommunications and qualifying for the *de minimis* exemption must notify the underlying facilities-based carriers from which they purchase telecommunications that they are exempt from contributions requirements and must be considered end users for universal service contribution purposes. Accordingly, the Commission directed underlying carriers to report revenues derived from providing telecommunications to entities qualifying for the *de minimis* exemption as end-user revenues on the appropriate lines of the Telecommunications Reporting Worksheet.").

³⁰ *Id.* (citing *FCC Public Notice Wireline Competition Bureau Releases 2011 Annual Telecommunications Reporting Worksheet (FCC Form 499-A) and Accompanying Instructions*, DA 11-400, WC Docket No. 06-122 (rel. Mar. 1, 2011 (explaining that the WCB revised and released the form and instructions)). See also, 47 C.F.R. 54.711(a).

³¹ *Id.* (citing 47 C.F.R. § 54.702(c)).

³² Email from Jonathan Marashlian, Marashlian & Donahue, LLC, to Kristin Berkland, USAC Assistant General Counsel (June 6, 2012).

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

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looks forward to working with USAC "to facilitate and ensure stricter adherence to unambiguous FCC rules and regulations associated with Universal Service contribution support."³⁶

With respect to the June 6, 2012 letter itself, USAC notes that the letter contains only a partial recitation of the information provided to your firm by USAC in response to your statements that USAC may accept voluntary federal universal service contributions from *de minimis* carriers.³⁷ For example, when characterizing USAC's response to your firm's February 2012 email, you quote the portion of USAC's response where USAC concluded it may not accept voluntary universal service support mechanism contributions from carriers and also quote the language USAC included in its response from the FCC's *Fourth Order on Reconsideration* that states that, in the Order, the FCC "declined to exclude from the contribution requirement all entities that claim compliance costs in excess of contribution amounts."³⁸ Notably absent from your letter, however, is USAC's reference to language in the FCC's orders that establishes that the *de minimis* threshold was raised specifically to take into account the costs of both USAC and *de minimis* carriers and that wholesale providers are required to treat the revenues from *de minimis* carriers as end user customer revenue (i.e., this was not a change to the FCC Form 499-A instructions created by USAC).³⁹ Also notably absent is USAC's statement that because there is nothing in the FCC's rules or orders permitting or directing USAC to accept voluntary universal service contribution obligations and because the question of whether USAC may accept voluntary universal service contribution obligations is currently pending before the FCC, it would be inappropriate for USAC to accept such contributions at this time.⁴⁰

The June 6, 2012 letter states that the FCC's recent FNPRM⁴¹ contains statements that conflict with USAC's position that it is not currently permitted to accept voluntary universal service contributions from *de minimis* carriers.⁴² Specifically, the letter asserts that the following language from the FNPRM stands for the proposition that the FCC intended that *de minimis* carriers not have a federal universal service contribution obligation at all, whether direct or indirect:

- "The *de minimis* exemption is meant to relieve small businesses of the cost of complying with our contribution rules when the cost would outweigh the contributions we could expect from the provider."⁴³

³⁶ *Id.*

³⁷ *June 2012 Letter.*

³⁸ *Id.*

³⁹ *Id.* See also, USAC March 2012 Email.

⁴⁰ *Id.* See also, USAC March 2012 Email.

⁴¹ See *supra* n.3.

⁴² *June 2012 Letter* at 2-3.

⁴³ *Id.* at 2 (citing FNPRM, ¶ 217).

- “Also, carriers that only have international revenues, but have no interstate revenues, are not currently required to contribute to the Fund.”⁴⁴

Based on these two excerpted sentences from the FNPRM, which you characterize as “unequivocal statements,” you urge USAC, yet again, to reconsider its position regarding the acceptance of voluntary federal universal service contribution obligations from *de minimis* carriers. You state that indirect contributions are inconsistent with the *de minimis* exemption and carriers with international only revenues are not required by the FCC’s rules or the FNPRM to contribute to the universal service support mechanisms at all.⁴⁵ You further state that USAC has no authority to require [REDACTED] to make universal service contributions indirectly through supplier pass-through surcharges and assert that international only and *de minimis* providers “should be offered the opportunity to avoid USF contributions – either direct or indirect – consistent with FCC rules and policies, as confirmed by the FNPRM.”⁴⁶ The June 6, 2012 letter again states that “USAC is bound by its FCC charter to do no more than to implement and administer FCC rules, regulations and policies.”⁴⁷ The letter further states that “[p]erpetuation of the current disconnect between USAC’s implementation and administration of the FCC’s intentions is not tolerable and must be addressed expeditiously.”⁴⁸ The letter concludes by advocating that “USAC need not await FCC guidance to correct its policies.”⁴⁹

USAC concurs that the FCC rules and regulations associated with the federal universal service contribution obligations of *de minimis* and international only carriers are unambiguous. USAC does not concur with your assertion, however, that the rules exempt *de minimis* and international only carriers from any and all federal universal service contribution obligations. As evidenced by your letter, your firm is operating under the mistaken impression that *de minimis* and international only providers should be exempt from both direct and indirect contributions to the federal universal service support mechanisms. This position is not consistent with the FCC’s rules and orders, nor is it consistent with the recent FNPRM.

With very limited exceptions, all intrastate, interstate, and international providers of telecommunications in the United States must file the FCC Form(s) 499 and must contribute to the USF based on their interstate and international end-user telecommunications revenues.⁵⁰ These telecommunications carriers are considered direct

⁴⁴ *Id.* (citing FNPRM, ¶ 194).

⁴⁵ *Id.* at 2.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.* at 3.

⁴⁹ *Id.*

⁵⁰ See 47 C.F.R. § 54.706(a) (“Entities that provide interstate telecommunications to the public, or to such classes of users as to be effectively available to the public, for a fee will be considered telecommunications carriers providing interstate telecommunications services and must contribute to the universal service support mechanisms.”); accord Instructions to the Telecommunications Reporting Worksheet, FCC Form 499-A, at 2-3 (Oct. 2011 version) (2011 Instructions). See also, 47 C.F.R. § 54.708 (providing that “[i]f a

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contributors to the federal universal service support mechanisms and federal universal service fund.⁵¹ Pursuant to FCC rule (47 C.F.R. §) 54.712, these carriers are permitted, but not required, to pass through their federal universal service contribution costs to their end-user customers.⁵²

Pursuant to FCC rule (47 C.F.R. §) 54.708, a *de minimis* carrier whose contribution to the federal universal service fund in any given year is less than \$10,000 is not required to directly contribute to the universal service support mechanisms and need not file the FCC Form 499-A unless it is required to do so by the FCC's rules governing the Telecommunications Relay Service, Local Number Portability and/or North American Numbering Plan Administration funds.⁵³ Although the rule itself does not explicitly state that the *de minimis* exemption applies to a carrier's direct federal universal service contribution obligation, multiple FCC orders so state.⁵⁴ USAC also notes that the FCC's

contributor's contribution to universal service in any given year is less than \$10,000 that contributor will not be required to submit a contribution or Telecommunications Reporting Worksheet for that year unless it is required to do so by our rules governing Telecommunications Relay Service, numbering administration, or shared costs of local number portability").

⁵¹ See, e.g., *In the Matter of Universal Service Contribution Methodology, Federal-State Joint Board on Universal Service, Petitions for Reconsideration and Clarification of the InterCall Order, Global Conference Partners, A+ Conference Ltd., Free Conferencing Corporation, and the Conference Group*, WC Docket No. 06-122, CC Docket No. 96-45, Order on Reconsideration, FCC 12-10, 27 FCC Rcd 898, 900, ¶ 5 (2012) (explaining that in June 2008, the Commission released the *InterCall Order*, which clarified that providers of audio bridging services have a direct federal universal service contribution obligation based on the end-user revenues they obtain from providing audio bridging services).

⁵² 47 C.F.R. § 54.712.

⁵³ 47 C.F.R. § 54.708.

⁵⁴ *In the Matter of Universal Service Contribution Methodology, Requests for Review of Decisions of the Universal Service Administrator and Requests for Waiver by: BCG, Inc. Reliable Telephone Company, LLC*, WC Docket No. 06-122, Order, DA 11-864, 2011 WL 1837652, *4 (2011) (explaining that "[p]roviders whose contribution to the universal service fund (USF) would be *de minimis*...are exempt from directly contributing" and citing 47 C.F.R. § 54.708) (emphasis added); *In the Matter of Universal Service Contribution Methodology, Request for a Review of a Decision of the Universal Service Administrator by Manitowoc Public Utilities*, WC Docket No. 06-122, Order, DA 11-566, 26 FCC Rcd 4925, 4925, ¶ 2 (2011) (same as previous); *In the Matter of Federal-State Joint Board on Universal Service, Request for Review of Cook Telecom, Inc. of a Decision of the Universal Service Administrator*, CC Docket No. 96-45, Order, DA 09-1251, 24 FCC Rcd 7611, 7612, ¶ 3 (2009) (stating that "[s]ince the inception of the universal service fund, the Commission has implemented various rules and guidelines intended to reduce administrative burdens for certain categories of contributors. For example the Commission's rules provide that contributors whose annual universal service contribution is expected to be less than \$10,000 are not required to directly contribute to the universal service mechanism, pursuant to the *de minimis* exemption") (emphasis added); *In the Matter of Universal Service Contribution Methodology, Federal-State Joint Board on Universal Service, 1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms, Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990, Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size, Number Resource Optimization, Telephone Number Portability, Truth-in-Billing and Billing Format, IP-Enabled Services*, WC Docket Nos. 06-122, 04-36, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200 95-116, 98-170, Report and Order

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Public Notice announcing the release of the 2000 Telecommunications Reporting Worksheet explained that “the April 2000 Worksheet sets forth information that contributors must submit, so that the administrators can...determine that an entity is *de minimis* – and thus exempt from **direct** contribution – for the purposes of universal service support mechanisms.”⁵⁵ Moreover, the 2012 FCC Form 499-A Instructions themselves state that “[p]roviders whose estimated contributions to universal service support mechanisms would be less than \$10,000 are considered *de minimis* for universal service contribution purposes and will not be required to contribute **directly** to universal service support mechanisms.”⁵⁶ Thus, contrary to statements made in your June 6, 2012 letter, the FCC’s orders and FCC Form 499-A instructions make clear that *de minimis* carriers do not have a **direct** federal universal service contribution obligation.

Regarding international only and other carriers that are exempt from direct federal universal service contribution obligations (including *de minimis* carriers), FCC orders and the FCC Form 499-A Instructions make clear that revenues from these exempt carriers must be treated as end-user by the exempt entities’ underlying carriers. Specifically, the FCC’s *Fourth Order on Reconsideration*, cited by your firm in its February 9, 2012 email and June 6, 2012 letter,⁵⁷ holds that providers that qualify for the *de minimis* exemption are considered end users for universal service reporting purposes and must be considered end-users by their underlying carriers for universal service contribution purposes.⁵⁸ The current FCC Form 499-A Instructions contain a paragraph titled “*Exempt Providers*”⁵⁹ that states that “[s]ome providers may be exempt from contributing to USF but nevertheless must file this Worksheet because they are required to contribute to TRS, NANPA, or [LNP]. For USF-purposes, these non-contributors must be treated as end users by their underlying carriers and therefore may end up contributing indirectly as a result of USF pass-through surcharges.”⁶⁰ Other sections of the Instructions also make clear that revenues obtained by underlying carriers from *de minimis* and international only carriers is to be treated as end-user revenue for federal universal service contribution purposes. For example, the “Attributing Revenues from Contributing Resellers and from End Users” section states “[f]or purposes of filling out this Worksheet – and for calculating contributions to the universal service support mechanisms – certain telecommunications carriers and other providers of telecommunications may be exempt

and Notice of Proposed Rulemaking, FCC 06-94, 21 FCC Rcd 7518, 7522-23, ¶ 8 (2006) (same as previous).

⁵⁵ See *Common Carrier Bureau Announces Release of Telecommunications Reporting Worksheet (FCC Form 499-A) for April 1, 2000 Filing by All Telecommunications Carriers*, CC Docket No. 98-171, Public Notice, DA 00-471, 15 FCC Rcd 16434 (Common Carrier Bur. 2000) (emphasis added).

⁵⁶ Instructions to the Telecommunications Reporting Worksheet, FCC Form 499-A, at 4 (2012) (emphasis added) (2012 Instructions).

⁵⁷ February 2012 Email; June 2012 Letter at 1-2.

⁵⁸ See *Fourth Order on Reconsideration*, 13 FCC Rcd 5318, *91, ¶ 281. See also, *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order on Reconsideration, FCC 04-237, 19 FCC Rcd 23824, 23841, ¶ 48 (2004).

⁵⁹ 2012 Instructions at 4 (2012) (emphasis in original).

⁶⁰ *Id.*

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from contribution to the universal service support mechanisms. These exempt entities, including 'international only' and 'intrastate only' providers and providers that meet the *de minimis* universal service threshold, should not be treated as resellers for the purpose of reporting revenues in Block 3. That is, filers that are underlying carriers should report revenues derived from the provision of telecommunications to exempt carriers and providers (including services that are provided to entities that are *de minimis* for universal service purposes) on...Block 4 of the Telecommunications Reporting Worksheet, as appropriate. Underlying carriers must contribute to the universal service support mechanisms on the basis of such revenues."⁶¹ These sections of the instructions are not new and, in fact, have been in place, at least in part, since as early as filing year 2000.⁶²

Because underlying carriers are required to treat exempt entities as end-user customers, as discussed in the previous paragraph, exempt entities may be assessed federal universal service pass-through charges by their underlying carriers.⁶³ This is made clear by FCC Rule (47 C.F.R. §) 54.712(a), which states that "[f]ederal universal service contribution costs may be recovered through interstate telecommunications-related charges to **end-users**."⁶⁴ Because exempt carriers contribute to the federal universal service support mechanisms based on pass-through charges from their underlying carriers (as opposed to being assessed a direct federal universal service contribution obligation by USAC), such carriers are referred to as indirect contributors.

With respect to the sentence from the FCC's recent FNPRM that your firm quotes in the June 6, 2012 letter to support its assertion that *de minimis* carriers may not be assessed indirect federal universal service contribution obligations, USAC notes that, read in context, the sentence relates to the costs associated with being a direct contributor to the federal universal service support mechanisms.⁶⁵ For example, when the first sentence

⁶¹ *Id.* at 22 (2012). See also, *id.* ("If, however, a reseller or other provider of telecommunications qualifies for the *de minimis* exemption, it must notify its underlying carriers that it is not contributing directly to universal service, so that it may be treated as an end user when the underlying carriers file FCC Form 499.") (emphasis in original).

⁶² 2011 Instructions at 3, 22, 27; Instructions to the Telecommunications Reporting Worksheet, FCC Form 499-A, at 5, 19, 32 (2010); Instructions to the Telecommunications Reporting Worksheet, FCC Form 499-A, at 5, 19-20, 32 (2009); Instructions to the Telecommunications Reporting Worksheet, FCC Form 499-A, at 5, 19, 32 (2008); Instructions to the Telecommunications Reporting Worksheet, FCC Form 499-A, at 5, 19, 32 (2007); Instructions to the Telecommunications Reporting Worksheet, FCC Form 499-A, at 5, 17, 27 (2006); Instructions to the Telecommunications Reporting Worksheet, FCC Form 499-A, at 5, 18, 28 (2005); Instructions to the Telecommunications Reporting Worksheet, FCC Form 499-A, at 5, 17, 26 (2004); Instructions to the Telecommunications Reporting Worksheet, FCC Form 499-A, at 16, 23 (2003); Instructions to the Telecommunications Reporting Worksheet, FCC Form 499-A, at 15-16, 23 (2002); Instructions to the Telecommunications Reporting Worksheet, FCC Form 499-A, at 15, 22 (2001); Instructions to the Telecommunications Reporting Worksheet, FCC Form 499-A, at 13, 20 (2000).

⁶³ 47 C.F.R. § 54.712.

⁶⁴ *Id.* (emphasis added).

⁶⁵ FNPRM at 77, ¶ 209 ("We also seek comment on how we could potentially reform our rules to minimize the filing requirements for companies that may be subject to the exemption."); 78, ¶ 212 ("Today's *de minimis* exemption creates administrative burdens and uncertainty for many qualifying providers and USAC. Specifically, tying *de minimis* status to a telecommunications provider's annual contribution

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quoted in your June 6, 2012 letter is read in context, it is clear that the FCC is seeking comment on ways to reduce the burden on *de minimis* carriers associated with the filing of the FCC Form 499-A. Specifically, the full language states:

“We also seek comment on other reforms the Commission could make to all of its *de minimis* rules...to relieve *de minimis* companies of the burden of filing the annual Telecommunications Reporting Worksheet. *The de minimis exemption is meant to relieve small businesses of the cost of complying with our contribution rules when that cost would outweigh the contributions we could expect from the provider.* Today, however, thousands of *de minimis* telecommunications providers must nevertheless complete the annual Telecommunications Reporting Worksheet. We seek comment on whether we should reform our rules for filing the annual Telecommunications Reporting Worksheet and set the *de minimis* threshold based on a metric that does not require completing the entire worksheet.” (emphasis added and internal citations omitted).⁶⁶

This understanding is consistent with the FCC’s *Fourth Order on Reconsideration* which states:

“Therefore, we conclude that the *de minimis* contribution threshold should be raised to \$10,000. If a contributor’s annual contribution would be less than \$10,000, it will not be required to contribute to universal service. We find that this exclusion will reduce significantly the Administrator’s collection costs. Based on Universal Service Worksheets, we estimate that approximately 1,600 entities will qualify for the *de minimis* exemption. Therefore, the Administrator will have to collect and process 1,600 fewer Worksheets and will have to identify and collect contributions from 1,600 fewer entities. Additionally, by exempting entities whose annual contributions would be less than \$10,000 from contribution and Worksheet reporting requirements, *we anticipate that we will reduce reporting burdens on many small entities.*”⁶⁷

amount means that some providers cannot project with reasonable certainty whether or not they will qualify as *de minimis* each year until mid-September, when the Commission announces the fourth-quarter contribution factor. Because of this uncertainty, many telecommunications providers close to the existing *de minimis* threshold must file the quarterly Telecommunications Reporting Worksheet and contribute on a quarterly basis out of precaution....” (internal citations omitted); 78, ¶ 213 (“We seek comment on whether we should modify the Commission’s *de minimis* rules in an effort to reduce administrative burdens. Specifically, we seek comment on revising the rule...to base the *de minimis* threshold on a provider’s assessable revenues rather than on the amount of its contributions....”); 80, ¶ 218 (“We seek comment on what steps would need to be taken to implement any of the potential modifications detailed above or alternative proposals to improve the contribution reporting requirements for *de minimis* providers.”).

⁶⁶ *Id.* at 80, ¶ 217.

⁶⁷ *Fourth Order on Reconsideration*, 13 FCC Rcd 5318, *97, ¶ 297 (emphasis added).

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Regarding the sentence related to international only carriers, FCC rules do not require international only carriers to contribute directly to the federal universal service support mechanisms.⁶⁸ As previously discussed, however, as an exempt entity, an international only carrier is required to be treated as an end-user customer by its underlying carrier and may be assessed federal universal service pass-through charges by the underlying carrier pursuant to FCC Rule (47 C.F.R. §) 54.712.⁶⁹

As stated in USAC's March 8, 2012 email correspondence, the *Fourth Order on Reconsideration* declined to exclude from the contribution requirement all entities that claim compliance costs in excess of contribution amounts and adopted a substantially increased *de minimis* threshold to account for both contributors' and USAC's compliance costs.⁷⁰ The Order did not exempt *de minimis* and international only carriers from indirect contributions to the federal universal service support mechanisms. As explained in footnote 356 of the FNPRM, "[d]e minimis telecommunications providers may indirectly contribute to the universal service support mechanisms through contribution pass through charges that they pay to their wholesale providers. *De minimis* telecommunications providers still benefit from the exemption, however, because their wholesale provider only contributes on *its* (wholesale) revenues rather than the *de minimis* telecommunications provider's (retail) revenues."⁷¹ Moreover, USAC notes that the FCC's FNPRM seeks comment on whether the Commission should eliminate the international only and LIRE exemptions altogether.⁷²

As pointed out by you in your June 6, 2012 letter, and by USAC in its March 8, 2012 email, USAC must enforce the FCC's rules, orders and FCC Form 499 instructions as written, unless otherwise directed by the FCC. In this case, the FCC's rules, orders and Form 499 instructions make clear that *de minimis* and international only carriers are end-user customers that, while they have no direct federal universal service contribution obligation, may incur an indirect federal universal service contribution obligation. As USAC has previously stated, there is nothing in the FCC's orders, rules or instructions that permits USAC to accept voluntary contributions from *de minimis* and international only carriers. Moreover, USAC again notes that because the question of whether a *de minimis* carrier may voluntarily contribute to the federal universal service support mechanisms is currently before FCC, it is not appropriate for USAC to accept such contributions at this time. Therefore, for the reasons discussed in detail in this letter, and the previous email correspondence between USAC and your firm, USAC is not authorized to accept voluntary federal universal service contribution obligations from *de minimis*, international only and other exempt carriers.

⁶⁸ *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, FCC 97-157, 12 FCC Rcd 8776, ¶ 779 (1997) ("We find that carriers that provide only international telecommunications services are not required to contribute to universal service support mechanisms because they are not 'telecommunications carriers that provide interstate telecommunications services.'").

⁶⁹ 47 C.F.R. § 54.712. See also, *supra* discussion on pages 9-10 and corresponding footnotes.

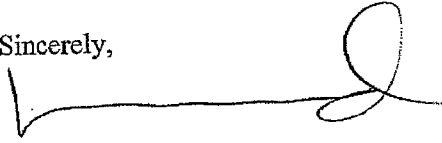
⁷⁰ See *USAC March 2012 Email*.

⁷¹ FNPRM at 78, n.356.

⁷² FNPRM at 74-75, ¶¶ 199-202.

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Sincerely,

A handwritten signature in black ink, appearing to read 'Kristin K. Berkland', with a long horizontal stroke extending to the right and a loop at the end.

Kristin K. Berkland
Assistant General Counsel
